



*United States Attorney  
Southern District of New York*

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**MARTHA STEWART AND HER BROKER INDICTED BY U.S. GRAND  
JURY; STEWART CHARGED SEPARATELY WITH SECURITIES FRAUD**

JAMES B. COMEY, the United States Attorney for the Southern District of New York, and KEVIN P. DONOVAN, the Assistant Director in Charge of the New York Office of the Federal Bureau of Investigation (the "FBI"), announced the filing today in Manhattan federal court of an Indictment charging MARTHA STEWART, the chairman of the board of directors and chief executive officer of Martha Stewart Living Omnimedia, Inc. ("MSLO"), and PETER BACANOVIC, a former securities broker at Merrill Lynch & Co., Inc., with conspiracy, obstruction of justice and making false statements to federal agents. The Indictment separately charges STEWART with securities fraud in connection with her artificial manipulation of the price of MSLO common stock, and separately charges BACANOVIC with perjury in testimony given before the United States Securities and Exchange Commission (the "SEC") and with making and using false documents, in connection with his fabrication of a document submitted to the SEC.

The Indictment charges that STEWART and BACANOVIC engaged in a scheme to obstruct investigations by the SEC, the FBI and the U.S. Attorney's Office for the Southern District of New York into STEWART's sale of stock in ImClone Systems Incorporated ("ImClone") on December 27, 2001, the day before ImClone announced a negative decision by the U.S. Food and Drug Administration. According to the Indictment, STEWART and BACANOVIC conspired to conceal and cover up that BACANOVIC had caused STEWART to be provided confidential, nonpublic information regarding efforts by ImClone's then-chief executive officer, Samuel Waksal, and a member of his family, to sell all of the ImClone stock they held at Merrill Lynch, and that STEWART had sold her ImClone stock while in possession of that information.

The Indictment's securities fraud charge against MARTHA STEWART arises from her making false and misleading statements to the investing public regarding the reasons for her December 27, 2001, sale of ImClone stock.

#### **STEWART's Sale of ImClone Stock**

According to the Indictment, between 9:00 a.m. and 10:00 a.m. on December 27, 2001, BACANOVIC learned that Samuel Waksal and a member of his family were seeking to sell all the ImClone shares they held at Merrill Lynch, then worth more than \$7.3 million (collectively referred to as the "Waksal Shares"). According to the Indictment, within minutes after being informed of the efforts

to sell the Waksal Shares, BACANOVIC called STEWART. After being told that STEWART was in transit and unavailable, BACANOVIC left a message, memorialized by STEWART's assistant, that "Peter Bacanovic thinks ImClone is going to start trading downward." The Indictment states that at the time BACANOVIC left this message for STEWART, ImClone's stock price was approximately \$61.53 per share. According to the Indictment, BACANOVIC, who was on vacation, directed his assistant, Douglas Faneuil, to inform STEWART about the Waksal transactions when she returned the call.

According to the Indictment, on December 27, 2001, at approximately 1:39 p.m. (EST), STEWART telephoned the office of BACANOVIC and spoke to Douglas Faneuil, who informed her that Samuel Waksal was attempting to sell all of the ImClone stock that Waksal held at Merrill Lynch. Upon hearing this news, STEWART directed Faneuil to sell all of her ImClone stock, 3,928 shares, yielding proceeds of approximately \$228,000.

The Indictment states that by selling a total of 3,928 shares of ImClone stock on the same day as the sale and attempted sale of the Waksal Shares, STEWART avoided significant trading losses. On December 31, 2001, the first day that ImClone stock traded after the FDA's decision was publicly announced, the price of ImClone stock opened at \$45.39, representing a decline of approximately 18%.

### The Scheme to Obstruct Justice

In January 2002, the SEC, the FBI and the U.S. Attorney's Office commenced investigations into trading in ImClone securities in advance of the public announcement of the FDA's negative decision, including into the trades conducted by Samuel Waksal and MARTHA STEWART. The Indictment charges that STEWART and BACANOVIC agreed that rather than tell the truth about the communications with STEWART on December 27, 2001 and the reasons for STEWART's sale of ImClone stock on December 27, 2001, they would instead fabricate and attempt to deceive investigators with a fictitious explanation for her sale -- that STEWART sold her ImClone stock on December 27, 2001 because she and BACANOVIC had a pre-existing agreement to sell the stock if and when the price dropped to \$60 per share.

The Indictment charges that STEWART, in an interview with the SEC, the FBI and the U.S. Attorney's Office, and BACANOVIC, both in an interview with the SEC and in sworn testimony with the SEC, made false statements regarding STEWART's sale of ImClone stock. According to the Indictment, among other things, both STEWART and BACANOVIC concealed and covered up that BACANOVIC caused STEWART to be informed of the Waksal transactions and that STEWART had sold her ImClone stock while in possession of that information. Instead, the Indictment charges that STEWART and

BACANOVIC falsely stated that they had a pre-existing agreement to sell her ImClone shares if ImClone's market price fell to \$60 per share.

The Indictment further charges that STEWART and BACANOVIC each falsely denied having any conversations regarding STEWART's ImClone sale or the federal investigations of that sale. The Indictment alleges that STEWART and BACANOVIC in fact had conversations regarding STEWART's sale of ImClone shares and the investigations of that sale. Among other things, the Indictment states that STEWART called BACANOVIC on the day she learned that the FBI and U.S. Attorney's Office had requested to interview her; that BACANOVIC called STEWART at 7:09 a.m. the morning of her interview with federal agents; and that STEWART placed multiple phone calls to BACANOVIC the day before and the morning of his sworn testimony with the SEC.

The Indictment also alleges that STEWART in her interview with federal agents falsely stated that she did not know whether the phone message BACANOVIC left for STEWART on December 27, 2001, was recorded in the phone message log maintained by her assistant. The Indictment charges, however, that four days before the interview, knowing that BACANOVIC's message for STEWART was based on information regarding the sale and attempted sale of the Waksal

Shares that BACANOVIC subsequently caused to be conveyed to her, STEWART temporarily deleted the substance of BACANOVIC's phone message, changing the message from "Peter Bacanovic thinks ImClone is going to start trading downward," to "Peter Bacanovic re imclone." After altering the message, STEWART directed her assistant to return the message to its original form.

The Indictment further charges that, in addition to making false statements, BACANOVIC altered a document in order to fabricate evidence that would falsely corroborate BACANOVIC's and STEWART's claims that STEWART had decided to sell her ImClone stock if the market price fell to \$60 per share. According to the Indictment, on or about December 21, 2001, BACANOVIC printed a "worksheet" that listed each of the stocks held by STEWART at Merrill Lynch, including ImClone (the "Worksheet"). On or about December 21, 2001, BACANOVIC made handwritten notes in blue ballpoint ink on the Worksheet concerning "tax loss selling" transactions and planned transactions in STEWART's account, but made no notes regarding any purported decision to sell STEWART's ImClone shares at \$60 per share. According to the Indictment, after learning of the SEC's investigation of STEWART's sale of ImClone stock, BACANOVIC altered the Worksheet, using ink that was blue ballpoint, but was scientifically distinguishable from the ink

used elsewhere on the Worksheet. BACANOVIC added the notation "@60" near the entry for ImClone.

### **STEWART's Securities Fraud**

The Indictment also charges STEWART with defrauding MSLO investors by manipulating artificially the price of MSLO stock through a series of false statements designed to deceive the investing public. The Indictment alleges that following the public announcement that STEWART had sold ImClone shares on the same day as members of the family of Samuel Waksal, MSLO's market price began steadily to fall, from a closing price of \$19.01 on June 6, 2002 to a closing price of \$11.47 on June 28, 2002. The Indictment states that as of June 6, 2002, STEWART held 30,713,475 shares of MSLO Class A common stock, which constituted 62.6% of the outstanding Class A common stock of MSLO.

According to the Indictment, in an effort to stop or at least to slow, the steady erosion of MSLO's stock price caused by investor concerns, STEWART made and/or caused to be made a series of false and misleading public statements regarding her sale of ImClone stock on December 27, 2001 that concealed that STEWART had been provided information regarding the sale and attempted sale of the Waksal Shares and that STEWART had sold her ImClone stock while in possession of that information. The Indictment charges that

STEWART made these false statements with the intent to defraud and deceive purchasers and sellers of MSLO common stock and to maintain the value of her own MSLO stock by preventing a decline in the market price of MSLO's stock. These false and misleading statements were contained in: (a) statements made on behalf of STEWART by one of her attorneys to the Wall Street Journal, published on June 7, 2002; (b) written public statements issued by STEWART on June 12 and 18, 2002; and (c) statements made by STEWART at a conference for securities analysts and investors on June 19, 2002.

According to the Indictment, among other things, STEWART falsely stated that she "did not have any nonpublic information regarding ImClone when [she] sold [her] ImClone shares" and that her sale of ImClone stock was executed because she had a predetermined plan to sell her ImClone stock if the stock price were to fall below \$60 per share. The Indictment charges that MSLO stock rose after STEWART issued her written public statements on June 12 and 18, 2002. On June 13, 2002 - the first day of trading after STEWART issued the June 12 statement - the price of MSLO stock opened at \$16.05 per share, representing a 7% increase from the \$15 closing price on June 12. On June 19, 2002, the day STEWART read her June 18 statement at a conference for securities



analysts and investors, MSLO stock closed at \$16.45, representing an increase of approximately 14%.

STEWART and BACANOVIC surrendered to federal authorities today and the case was assigned to United States District Judge MIRIAM GOLDMAN CEDARBAUM.

STEWART, 62, lives in Westport, Connecticut.

BACANOVIC, 41, lives in Manhattan.

Faneuil previously pled guilty to one count of receiving items of value in exchange for not informing against BACANOVIC and STEWART. Faneuil is scheduled to be sentenced by United States Magistrate Judge KEVIN NATHANIEL FOX on September 9, 2003.

Mr. COMEY, a member of the President's Corporate Fraud Task Force, praised the efforts of the FBI. Mr. COMEY also thanked the SEC for its assistance in the investigation of this case.

Assistant United States Attorneys KAREN PATTON SEYMOUR, RICHARD D. OWENS and MICHAEL S. SCHACHTER are in charge of the prosecution.

The charges contained in the Indictment are merely accusations, and the defendants are presumed innocent unless and until proven guilty.

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MAXIMUM PENALTIES

COUNT	CHARGE	DEFENDANT	MAXIMUM PENALTY
One	Conspiracy (18 U.S.C. § 371)	STEWART BACANOVIC	5 years in prison; \$250,000 fine
Two	False Statements (18 U.S.C. § 1001)	BACANOVIC	5 years in prison; \$250,000 fine
Three	False Statements (18 U.S.C. § 1001)	STEWART	5 years in prison; \$250,000 fine
Four	False Statements (18 U.S.C. § 1001)	STEWART	5 years in prison; \$250,000 fine
Five	False Documents (18 U.S.C. § 1001)	BACANOVIC	5 years in prison; \$250,000 fine
Six	Perjury (18 U.S.C. § 1621)	BACANOVIC	5 years in prison; \$250,000 fine
Seven	Obstruction Of Agency Proceedings (18 U.S.C. § 1505)	BACANOVIC	5 years in prison; \$250,000 fine
Eight	Obstruction Of Agency Proceedings (18 U.S.C. § 1505)	STEWART	5 years in prison; \$250,000 fine
Nine	Securities Fraud (15 U.S.C. § 78j(b))	STEWART	10 years in prison; fine of \$1 million or twice gain or loss